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By

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A. David Joran (Reg. No. 37,858)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: De Raspidé et al.	:	
APPLICATION NO.: 09/912,774	:	Examiner: Pulliam, A.E.
FILING DATE: July 25, 2001	:	Art Unit: 1615
TITLE: PARTICULATE COMPOSITION OF ELETRIPTAN	:	

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Bull
10-30-02

Commissioner for Patents
Washington, D.C. 20231

Sir:

COMMUNICATION IN RESPONSE TO SEPTEMBER 24, 2002 OFFICE ACTION

This Communication is submitted in response to the Office Action issued on September 24, 2002 in connection with the above-identified application. A response is due October 24, 2002. Accordingly, this Communication is being timely filed.

RESTRICTION REQUIREMENT

In the Office Action, the Examiner re-restricted the claims under 35 U.S.C. §121 to two inventive Groups.

According to the Examiner, the inventions are distinct, each from the other because the Groups represent separate and distinct inventions.

In response to the restriction election requirement, applicants hereby elect Group I, with traverse, and the specific embodiment of claim 11 (i.e., the composition wherein the core includes eletriptan hemisulfate, a hydroxypropylmethylcellulose, a polyethylene glycol and a non-pareil seed). with traverse, as the single species for purposes of examination. However, applicants respectfully disagree with the restriction requirement on the ground that it is improper since prosecution of the restricted subject matter in a single application would not place a serious burden on the Examiner. MPEP §803. According to MPEP §803, the Examiner may impose a group restriction when (1) the inventions are independent or distinct

as claimed and (2) where there is a serious burden on the Examiner if restriction is not required. Since the core subject matter recited in non-elected Group II is necessarily related to, or otherwise functionally connected with, that of elected Group I, relevant prior art for all Groups would likely be found in the same place, and therefore, no added burden is imposed on the Examiner to search the non-elected Groups II.

Claims 1-9, 11, 1, and 15-42 are readable on the elected species.

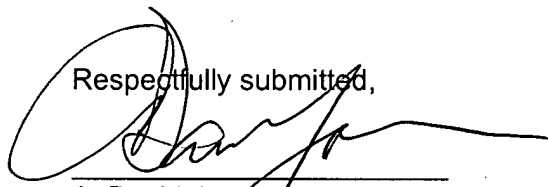
Accordingly, applicants respectfully request reconsideration and withdrawal of the restriction requirement, and rejoinder of non-elected Group II with elected Group I.

Applicants respectfully submit that the pending claims are allowable, and solicit the issuance of a notice to such effect. If a telephone interview is deemed to be helpful to expedite the prosecution of the subject application, the Examiner is invited to contact applicants' undersigned attorney at the telephone number provided.

No fee is believed to be necessary in connection with this Communication. Authorization, however, is hereby provided to charge any fee deemed required, or to credit any overpayment, to Deposit Account No. 16-1445.

Date: October 21, 2002

Respectfully submitted,



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